

Supreme Court, U.S.  
FILED

No. 051008 FEB 7 - 2006

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In The  
**Supreme Court of the United States**

ERIC HALL, ET AL.,

*Petitioners,*

v.

JIM SHIPLEY, ET AL.,

*Respondents.*

**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Sixth Circuit**

**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Whether, in a §1983 municipal liability case, the plaintiff's burden to establish the causal link between the municipal policy or custom and the alleged constitutional deprivation presents a question of fact or a question of law.
2. Whether the court of appeals erred by (i) assuming jurisdiction over an interlocutory appeal of a qualified immunity decision in a §1983 municipal liability case when the interlocutory appeal was not separate from the merits of the action and was based upon a factual dispute, and (ii) deciding the merits of the action by holding that the constitutional rights of a law enforcement officer under possible threat of death from a domestic terrorist organization were not violated by the release without prior notice and opportunity for hearing of sensitive personal information about the officer and his family from the officer's personnel file to a malicious internet web site operator who posted the information on the internet.
3. Whether a court of appeals assuming jurisdiction over a municipal officer's interlocutory appeal of a qualified immunity ruling in a §1983 case may conjunctively review a related but not independently appealable ruling involving the merits of the plaintiff's separate case against the municipality and choose between competing causes of the plaintiff's injury to decide whether a constitutional violation occurred.
4. Whether the court of appeals violated petitioners' Seventh Amendment right to a jury trial of the issue of causation of petitioners' injury in a municipal liability case brought under 28 U.S.C. §1983.

## **PARTIES TO THE PROCEEDING**

The petitioners here and appellees below are Eric Hall and his wife Lisa Hall, individually and as next friends on behalf of their minor children Jane Doe 1, Jane Doe 2, and Jane Doe 3.

The Respondents here and the appellants below are Cookeville City Manager Jim Shipley and Cookeville Police Chief Bob Terry, in their individual capacities. They are defendants in their official capacities in the trial court, but are not parties in their official capacities at the appellate level. The State of Tennessee also appeared below as an appellant, but the court of appeals dismissed the State's appeal for lack of jurisdiction. The City of Cookeville, Tennessee is a defendant in the trial court but is not a party at the appellate level.

## **CORPORATE DISCLOSURE STATEMENT**

The petitioners here are all individuals.

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## OPINIONS BELOW

The opinion of the court of appeals was not recommended for full text publication. It can be found at 2005 WL 3065972 (C.A.6 (Tenn.)) 2005 Fed. App. 0894N (slip op.), and is reprinted in the appendix to this petition ("App.") at pages App. 1-7. The district court's unpublished memorandum opinion is reprinted *infra* at App. 10-40.

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## JURISDICTION

The court of appeals entered its judgment on November 10, 2005. This Court has jurisdiction under 28 U.S.C. §1254(1).

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## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part that "No State shall \* \* \* deprive any person of life, liberty, or property, without due process of law \* \* \* ." U.S. Const., Fourteenth Amendment.

The Seventh Amendment to the United States Constitution provides: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law." U.S. Const., Seventh Amendment.

Section 1983 of Title 42 of the United States Code is set forth at App. 45. The provisions of the Tennessee Open

Records Act ("TORA") involved in this case, including T.C.A. §§10-7-503 and 10-7-504, are reproduced *infra* at App. 41-44.

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### STATEMENT OF THE CASE

This case involves competing interests when a local government faces the decision of whether and how to release to the public, including the media, sensitive personal information contained in a law enforcement officer's personnel file in the presence of a potential risk of harm from a domestic terrorist organization to the officer and his family. The Tennessee Open Records Act ("TORA") requires local governments to provide access – with limited redactions – to the personnel files of uniformed law enforcement officers upon demand of any citizen of the state of Tennessee, and does not require notice to the officer until *after* the disclosure has occurred. T.C.A. §§10-7-503(c)(1), App. 41; 10-7-504(f)(1), App. 42. The Sixth Circuit has held that due process requires *prior* notice and opportunity for hearing to "a police officer" when the release of certain personally identifying information (including information not required to be redacted by TORA) could endanger the officer or his family. *Kallstrom v. City of Columbus*, 136 F.3d 1055 (6th Cir. 1998). Although its holding was not so limited, *Kallstrom's* facts involved undercover police officers. TORA allows, but does not require, certain personnel information of undercover officers to be treated as confidential. T.C.A. §10-7-504(g), App. 43.

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### **Factual Background**

On January 1, 2003, petitioner Eric Hall shot and killed a dog in the course of performing his duty as a uniformed police officer for the City of Cookeville, Tennessee ("City"). A national public outcry followed. Jim Shipley, Cookeville city manager, desired for Hall to go on Nashville local television to try to stem the tide of resentment against the City. Reluctantly, Hall did so.

Rather than stemming the tide, Hall's initial television appearance only stimulated the desires of the public to communicate more expressions of outrage, and only whetted the appetites of the media for more exposure. The following day the City received an anonymous telephone tip that a terrorist animal rights organization was putting out a "contract" on the life of Eric Hall. The City also received public records requests from a Knoxville newspaper and a Knoxville television station for Hall's personnel file. Although Shipley and Cookeville Police Chief Bob Terry were aware of the Sixth Circuit's 1998 holding in *Kallstrom* requiring notice and opportunity for hearing before releasing information from a police officer's personnel file when doing so could place the officer or his family in danger, they failed for over four years to put in place a system for ensuring this was done. The City's municipal policy or custom required the automatic release of police officer personnel files to any citizen of the State of Tennessee who requested them, subject to redaction of certain items of information required by TORA, notwithstanding any risk of harm to the officer. The City's administrative assistant Gail Fowler executed the City's policy by granting both requests for the file. Later, the City received a public records request for Hall's personnel file from a malicious internet web site well known to City leaders.

Again, the administrative assistant executed the City policy and released the file to the website operator, which published Hall's file on the internet. Later still, in an effort to control the damage done by his first television appearance, Hall granted an interview with a local radio station, a national television station, and a local newspaper. In none of the interviews did Hall reveal all of the information contained in his personnel file. App. 15-19. Finally, Hall learned his personnel file had been published on the internet and filed this suit.

### **Proceedings Below**

Petitioners, invoking the district court's subject matter jurisdiction under 28 U.S.C. §1331 and 28 U.S.C. §1343, sued the City of Cookeville and the individual defendants Shipley and Terry under 42 U.S.C. §1983 for deprivation of the liberty interest in personal security – implicated by the fundamental constitutional privacy right – without due process of law. Petitioners asserted municipal liability under §1983 against the City for the execution of an unconstitutional policy or custom, and against Shipley and Terry individually for deliberate indifference to Hall's constitutional rights. Petitioners also challenged the constitutionality of TORA. The State of Tennessee intervened to defend the constitutionality of TORA. Hall offered lay testimony and filed an expert affidavit opining that the release of Hall's file "caused a substantial risk of harm to the personal security and bodily integrity including serious bodily injury or even death of Officer Hall and his family." App. 20-21; 31. The City, and Shipley and Terry in their official capacities, moved for summary judgment, asserting they did not violate Hall's constitutional rights.